

**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

ROBERT M. GERBER, AS TRUSTEE OF  
ROSALIE GERBER TRUST, WILLIAM J.  
GILLIGAN AND JAYNE GILLIGAN,  
HUSBAND AND WIFE, SANFORD R.  
HOFFMAN AND BETH L. HOFFMAN,  
HUSBAND AND WIFE,  
AND JAMES D. BURNS,

Plaintiffs,

v.

ROBERT S. BOWDITCH, JR.,  
GERALD SLAVET, STEVEN RIOFF,  
AND BSR ASSOCIATES,

Defendants.

CIVIL ACTION NO.  
05-10782-DPW

**DEFENDANTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 12(b)(2), Defendants, Robert S. Bowditch, Jr., Gerald Slavet, Steven Rioff, and BSR Associates hereby move to dismiss Plaintiffs' First Amended Complaint.

A memorandum of law in support of this Motion is filed herewith.

WHEREFORE, Defendants respectfully request that this Court enter an Order granting Defendants' Motion, at the Plaintiffs' costs, and for such other and further relief as the Court deems just, fair and proper.

**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1**

I hereby certify that my co-counsel, Steven Hansen, has conferred with John O'Conner, counsel for the Plaintiffs, and attempted in good faith to resolve the issues herein, and that no resolution was reached.

/s/ Donald J. Savery  
Donald J. Savery

**REQUEST FOR ORAL ARGUMENT**

Pursuant to Local Rule 7.1(D), Defendants respectfully request the opportunity to present oral argument on Defendants' Motion To Dismiss First Amended Complaint.

Respectfully submitted,

**ROBERT S. BOWDITCH, JR.,  
GERALD SLAVET,  
STEVEN RIOFF, AND  
BSR ASSOCIATES,**  
By their attorneys,

/s/ Donald J. Savery  
Steven W. Hansen ( BBO# 220820)  
Donald J. Savery (BBO# 564975)  
Christina N. Davilas (BBO# 655477)  
Bingham McCutchen LLP  
150 Federal Street  
Boston, MA 02110  
(617) 951-8000

Dated: July 25, 2005

CERTIFICATE OF SERVICE

I, Donald J. Savery, hereby certify that on this 25th day of July, 2005, I served the foregoing document by causing a true copy of same to be delivered by federal express to counsel for the Plaintiffs.

/s/ Donald J. Savery  
Donald J. Savery